

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

) MM Docket No.

)

Amendment of Section 73.202(b)

) RM _____

Table of FM Allotments

)

Esperanza, Puerto Rico

)

TO: Chief, Allocations Branch, Mass Media Bureau

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OPPOSITION TO PETITION FOR RECONSIDERATION

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V.I. Stereo Communications Corp. ("WVIS"), licensee of FM broadcast station WVIS, Christiansted, St. Croix, U.S.V.I., by its counsel, hereby submits its opposition to the PETITION FOR RECONSIDERATION filed by Esperanza Broadcasters ("ESP") in connection with ESP's proposal to allocate Channel 258B at Esperanza, Puerto Rico. In support whereof, the following is stated:

1. ESP's petition for rulemaking was filed on July 28, 1995. However, WVIS was not served with the petition. WVIS was given notice of the filing by the Commission's Public Notice, Report No. 2110, dated November 2, 1995.

2. Section 1.401 of the Commission's Rules reads, in part, as follows:

(d) Petitions for amendment of the FM Table of Assignments (§73.202 of this chapter) ... shall be served by petitioner on any Commission licensee or permittee whose channel assignment would be changed by grant of the petition. The petition shall be accompanied by a certificate of service on such licensees or permittees....

(e) Petitions which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.

3. Under the ESP proposal, the WVIS channel assignment would have to be changed in order to accommodate the move of WVIQ, Christiansted to Channel 293B as

proposed by ESP since WVIS operates on Channel 291B in Christiansted, requiring a separation of 74 km (Section 73.207 of the Commission's Rules). Accordingly, ESP was required to serve the petition on WVIS (Section 1.401(d)), and the Commission should reaffirm its dismissal on this ground alone.

4. In addition, the pleading was premature, requiring dismissal under Section 1.401 (e). The Report and Order in MM Docket No. 91-259, at para. 21, specified that the various changes in the FM Table of Allotments were to be effective on August 7, 1995. Since ESP filed its petition for rulemaking prior to August 7, it was premature (since in conflict with WVIS's allocation up until the effective date of the move of WVIS to Vieques). This is so even if petitions for reconsideration of that order had not been filed. So there is yet another independent basis for dismissal of the petition and denial of the instant petition for reconsideration.

5. In para. 2 of its petition for reconsideration, ESP argues that the Commission "must treat similarly situated parties before it similarly," arguing that the Commission's action in accepting an application for change of channel pursuant to the allocation order is the same as accepting a rulemaking petition which is dependent on the allocation order. However, the parties are not "similarly situated" as contended by ESP since the application in question was filed on the "effective date" of the order while the petition for rulemaking was filed before the "effective date." Therefore, whether or not ESP and Carlos Colon Ventura ("Colon") would otherwise be similarly-situated parties need not be considered here. The fact that ESP filed before the effective date while Colon filed on the

effective date distinguishes the actions and renders them not "similarly situated" regardless of the merits of ESP's other arguments.

6. For the reasons stated above, the Commission was correct in dismissing the ESP rulemaking petition on procedural grounds without even considering the merits of the ESP proposal. However, one other matter bears mentioning. On July 24, 1995, Arso Radio Corporation ("Arso") filed a petition for reconsideration in MM Docket No. 91-259. Arso's petition was filed by attorney John P. Bankson, Jr. of the law firm of Drinker, Biddle & Reath. The instant petition was filed by the same attorney and law firm. Since the Arso petition for reconsideration is in conflict with the ESP proposal, there is a clear conflict of interest between the proposals advanced by the same law firm. This would be permitted only if Arso has consented to the ESP filing, raising a serious question as to whether Arso and ESP are acting in concert to advance conflicting proposals before the FCC.¹ While these issues are moot in light of the Commission's dismissal of the ESP proposal, they certainly should be explored if the Commission determines at some future point to consider the ESP proposal.

WHEREFORE THE PREMISES CONSIDERED, it is respectfully requested that the above-referenced petition for reconsideration be denied.

Respectfully submitted,

Law Offices
JAMES L. OYSTER
108 Oyster Lane
Castleton, VA 22716-9720
November 7, 1995
(540) 937-4800

V.I. STEREO COMM. CORP.
(WVIS)

By 

James L. Oyster
Counsel

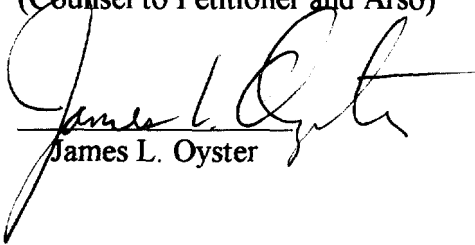
¹ Arso and ESP are also represented by the same engineering firm.

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent a copy of the foregoing OPPOSITION TO PETITION FOR RECONSIDERATION by first class U.S. mail, postage prepaid, or by hand delivery, on or before the 7th day of November, 1995, to the following:

Frank R. Jazzo, Esq.
Fletcher, Heald & Hildreth
11th Floor
1300 North 17th Street
Rosslyn, VA 22209
(Counsel to Colon-Ventura)

John P. Bankson, Jr., Esq.
Drinker, Biddle & Reath
901 15th Street, N.W., Suite 900
Washington, D.C. 20005-2503
(Counsel to Petitioner and Arso)


James L. Oyster